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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

DIANNA JOU and JAYNRY YOUNG,
 on behalf of themselves and all others
 similarly situated,

Plaintiffs,

v.

**KIMBERLY-CLARK
 CORPORATION; KIMBERLY-
 CLARK WORLDWIDE, INC.;
 KIMBERLY-CLARK GLOBAL
 SALES, LLC; and DOES 1-5.**

Defendants.

Case No. 3:13-cv-03075-JSC

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: November 21, 2013
 Time: 9:00 a.m.
 Place: Courtroom F, 15th Floor
 Judge: Magistrate Judge Jacqueline
 Scott Corley
 Complaint Filed: July 3, 2013

1 Plaintiffs Dianna Jou and Jaynry Young (together, “Plaintiffs”), and Defendants
 2 Kimberly-Clark Corporation, Kimberly-Clark Worldwide, Inc., and Kimberly-Clark Global Sales,
 3 LLC (collectively, “Defendants”), jointly submit the following Case Management Statement,
 4 pursuant to this Court’s Order Setting Initial Case Management Conference and ADR Deadlines
 5 (Dkt. 5).

6 **1. Jurisdiction and Service:**

7 **(a) Subject Matter Jurisdiction:** Plaintiffs allege this Court has original
 8 subject matter jurisdiction over the above-captioned action pursuant to the Class Action Fairness
 9 Act, 28 U.S.C. § 1332(d). Plaintiffs allege there are at least 100 members in the proposed
 10 plaintiff class, a member of the plaintiff class is a citizen of a State different from the State of
 11 citizenship of a defendant, and the amount in controversy exceeds the sum of \$5,000,000.00,
 12 exclusive of interest and costs.

13 Defendants challenge Plaintiffs’ standing under both Article III and California’s consumer
 14 protection statutes, and, as a result, this Court’s subject matter jurisdiction. Those arguments are
 15 raised in Defendants’ Motion to Dismiss Plaintiffs’ Complaint or, in the Alternative, Motion to
 16 Strike (referred herein as the “Motion to Dismiss”) and supporting papers, filed on September 17,
 17 2013. (Dkt. Nos. 8–10.)

18 **(b) Personal Jurisdiction and Venue:** This Court has personal jurisdiction
 19 over the parties in this case because Plaintiffs are California citizens and chose to file suit in this
 20 forum and because Defendants have consented to the personal jurisdiction of this Court. No
 21 issues exist with respect to personal jurisdiction or venue.

22 **(c) Service:** Defendants have waived service of process. (Dkt. 7.) No parties
 23 remain to be served.

24 **2. Facts:** Plaintiffs Dianna Jou and Jaynry Young, both of whom are consumers
 25 residing in California, filed the Complaint in the above-captioned action on July 3, 2013. (Dkt. 1-
 26 1.) Plaintiffs allege they purchased Defendants’ Huggies® Pure & Natural Diapers and
 27 Huggies® Natural Care Baby Wipes (collectively, the “Products”), which Defendants
 28 manufacture, market, and distribute to retailers nationwide for sale to consumers. Plaintiffs allege

Defendants represent that the Products are natural, environmentally sound, and safer alternatives to traditional diapers and wipes, including traditional Huggies® brand diapers and wipes. Additionally, Plaintiffs allege Defendants represent Huggies® Pure & Natural Diapers as a pure and organic alternative to traditional diapers. However, according to Plaintiffs, these representations are untrue. Plaintiffs allege that these deceptive representations have caused injury to Plaintiffs and the proposed class. Based on the foregoing allegations, Plaintiffs assert claims for: (1) violation of the Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.* (the “CLRA”); (2) violation of the False Advertising Law, Bus. & Prof. Code § 17500 *et seq.* (the “FAL”); (3) violation of the Environmental Marketing Claims Act, Bus. & Prof. Code § 17580 *et seq.*; (4) violation of the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* (the “UCL”); and (5) violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18.

Factual issues in dispute include whether Defendants misrepresented and/or failed to disclose material facts concerning Huggies® Pure & Natural Diapers and Huggies® Natural Care Baby Wipes; whether Defendants’ conduct was unfair and/or deceptive; whether Defendants have been unjustly enriched as a result of the unlawful, fraudulent, and unfair conduct alleged in the Complaint, such that it would be inequitable for Defendants to retain the benefits conferred upon Defendants by Plaintiffs and the class members; and whether Plaintiffs and the class members have sustained damages with respect to the statutory claims asserted, and if so, whether damages are properly limited to initial product purchases.

3. Legal Issues: The legal issues involved in this case include: whether all of Plaintiffs’ claims are fraud-based; whether Plaintiffs plead fraud with the particularity Federal Rule of Civil Procedure 9(b) requires; whether it is plausible that the Product packaging could lead a reasonable consumer to believe the Products are made entirely of natural material; whether Plaintiffs have Article III and statutory standing to seek restitution; whether Plaintiffs have standing for injunctive relief; whether a nationwide class can assert claims under the Wisconsin Deceptive Trade Practices Act; and whether Plaintiffs can represent a nationwide class governed by Wisconsin law.

1 **4. Motions:** On September 17, 2013, Defendants filed their Motion to Dismiss.
2 (Dkt. 8.) Through stipulation by the parties, the Motion schedule was extended so Plaintiffs have
3 until October 22, 2013 to file their Response and Defendants have until November 11, 2013 to
4 file a Reply. (Dkt. 22.) The Hearing date for the Motion is set for November 21, 2013. (*Id.*)

5 Plaintiffs anticipate filing a motion for class certification at the appropriate time.

6 As discussed in the Motion to Dismiss, although Plaintiffs have named Kimberly-Clark
7 Corporation and Kimberly-Clark Worldwide, Inc. as co-defendants, Defendants believe those
8 entities are improper parties to this suit. (Dkt. 8 at 1 n.1.) If necessary, counsel for Defendants
9 will move to dismiss the wrongly served parties at a later date.

10 **5. Amendment of Pleadings:** Plaintiffs expect to add parties if discovery reveals the
11 identities of the “Does #1-5” defendants who, along with the identified Defendants, Plaintiffs
12 believe to be responsible for the manufacture, marketing, and/or distribution of the Products.

13 **6. Evidence Preservation:** Plaintiffs have taken steps to preserve evidence relevant
14 to this action, including collecting documents in their possession and saving electronic
15 documents. Additionally, on April 5, 2013, Plaintiffs sent to Defendants a letter reminding
16 Defendants of their document and electronically stored information preservation requirements.

17 Defendants are using their best efforts to preserve any electronically stored information in
18 their possession concerning the labeling of Huggies® Pure & Natural Diapers and Huggies®
19 Natural Care Baby Wipes and the allegations contained in the Complaint. Defendants believe
20 that production of documents and electronically stored information should not take place before
21 Defendants’ pending Motion to Dismiss is resolved.

22 **7. Disclosures:** On September 19, 2013, the parties held a conference pursuant to
23 Federal Rule of Civil Procedure 26(f). On October 3, 2013, the parties conferred about additional
24 discovery matters and exchanged initial disclosures pursuant to Federal Rule of Civil Procedure
25 26(a)(1).

26 **8. Discovery:** Discovery has not yet commenced, and the Court has not set any
27 discovery deadlines. Plaintiffs anticipate discovery on all relevant issues identified in the
28 Complaint. The parties do not propose any limitations or modifications to the discovery rules.

1 Defendants, however, believe that discovery should be stayed pending the Court's resolution of
2 the Motion to Dismiss, which will be heard on November 21, 2013. Defendants expect to take
3 the depositions of the named plaintiffs in this action and to seek documents referencing their
4 alleged purchases of Huggies® Pure & Natural Diapers and Huggies® Natural Care Baby Wipes.
5 Defendants have not determined what additional discovery will be necessary if this case
6 progresses.

7 At this early stage of the litigation, the parties have not discussed a protocol for the
8 production of certain electronically stored information. The parties will consider the option of a
9 stipulated e-discovery order at an appropriate time. The parties also anticipate seeking entry of a
10 stipulated protective order governing the disclosure and use of Defendants' confidential and
11 proprietary business information.

12 **9. Class Actions:** Plaintiffs propose that they file a motion for class certification
13 pursuant to Federal Rule of Civil Procedure 23 after conducting appropriate discovery.

14 Defendants contend that numerous individualized issues will prevent class certification in
15 the event this action is not dismissed on the pleadings. In their Motion to Dismiss, Defendants
16 also moved to dismiss and/or strike Plaintiffs' proposed nationwide class on the grounds that the
17 claims of the putative class representatives are governed by California (not Wisconsin) law and
18 each class member's consumer protection claim should be governed by the consumer protection
19 laws of the jurisdiction in which they purchased the Products.

20 **10. Related Cases:** There are no related cases.

21 **11. Relief:** Plaintiffs seek both injunctive and monetary relief. Plaintiffs seek to
22 enjoin Defendants from using the allegedly misleading marketing and labeling of the Products.
23 Plaintiffs also seek return of the purchase price that they and other consumers paid for the
24 Products.

25 Defendants do not presently claim any damages but reserve the right to seek reasonable
26 attorneys' fees and costs at the appropriate time.

1 **12. Settlement and ADR:** All parties have complied with ADR L.R. 3-5. (Dkt. Nos.
2 17, 19, 20.) On September 25, 2013, the parties stipulated and agreed to participate in mediation
3 under ADR L.R. 6. (Dkt. 25.) The stipulation was so ordered on September 26, 2013. (Dkt. 26.)

4 **13. Consent to Magistrate Judge for All Purposes:** All parties have consented to
5 have a magistrate judge conduct all further proceedings, including trial and entry of judgment.

6 **14. Other References:** The parties do not believe the case is suitable for reference to
7 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

8 **15. Narrowing of Issues:** After Defendants' Motion to Dismiss has been resolved, the
9 parties will be in a better position to determine, if necessary, whether issues can be narrowed by
10 agreement or motion.

11 **16. Expedited Schedule:** The parties do not believe this action should be handled on
12 an expedited basis with streamlined procedures.

13 **17. Scheduling:** Defendants believe discovery should be stayed until the Court rules
14 on the Motion to Dismiss that will be heard on November 21, 2013. Plaintiffs do not oppose
15 staying discovery and defer to the Court's discretion as to whether to do so. The parties propose
16 the following case management schedule:

Factual Discovery Deadline:	December 19, 2014
Initial Expert Disclosures:	January 23, 2015
Rebuttal Expert Disclosures:	March 27, 2015
Expert Discovery Cutoff:	May 29, 2015
Deadline to File Dispositive Motions:	July 24, 2015
Final Pretrial Conference:	November 5, 2015
Trial Date:	December 7, 2015

24 **18. Trial:** Plaintiffs have demanded a trial by jury. The parties expect that a trial
25 would last two weeks.

26 **19. Disclosure of Non-party Interested Entities or Persons:** Defendants have filed
27 the "Certification of Interested Entities or Persons" that Civil Local Rule 3-16 requires. (Dkt.
28

11.) Defendants know of no interested entities other than the named parties in this action. Plaintiffs have not filed the "Certification of Interested Entities or Persons."

20. Other Matters: The parties do not wish to raise any other matters.

DATED: October 3, 2013

REESE RICHMAN LLP

By: /s/ Michael R. Reese

Michael R. Reese

Attorneys for Plaintiffs

DATED: October 3, 2013

KING & SPALDING LLP

By: /s/ Timothy T. Scott

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